

139 E. WARM SPRINGS RD.
LAS VEGAS, NEVADA 89119
T. 702.380.0007 | F. 702.380.2964

BRANDON | SMERBER
LAW FIRM

LEW BRANDON, JR., ESQ.

Nevada Bar No. 5880

ANDREW GUZIK, ESQ.

Nevada Bar No. 12758

SARA PASQUALE, ESQ.

Nevada Bar No. 14412

BRANDON | SMERBER LAW FIRM

139 East Warm Springs Road

Las Vegas, Nevada 89119

Office (702) 380-0007-Fax (702) 380-2964

l.brandon@bsnv.law

a.guzik@bsnv.law

s.pasquale@bsnv.law

Attorneys for Defendant,

ALBERTSONS, LLC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EILEEN ROTH,

Plaintiff,

v.

ALBERTSONS, LLC, a Foreign Limited-
Liability Company, d/b/a ALBERTSONS;
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.:

**DEFENDANT ALBERTSONS, LLC'S NOTICE OF REMOVAL OF ACTION TO
UNITED STATES DISTRICT COURT UNDER 28 USC § 1441(a)**

Defendant, ALBERTSONS, LLC, by its undersigned attorney, LEW BRANDON, JR.,
ESQ., ANDREW GUZIK, ESQ., and SARA PASQUALE, ESQ., of the BRANDON | SMERBER
LAW FIRM, hereby removes the above-captioned case to the United States District Court, Clark
County, Nevada, where the action is now pending, pursuant to 28 USC § 1441 (a) and states as
follows:

1 1. The above-entitled action was commenced in the Eighth Judicial District Court,
2 Clark County, State of Nevada on December 1, 2020, bearing Case No. A-20-825624-C. The
3 action is now pending in the Eighth Judicial District Court, Clark County, State of Nevada.

4 2. Plaintiff filed her Complaint on or about December 1, 2020. Plaintiff's
5 Complaint fails to state that this case is one which is or has become removable. *See Harris v.*
6 *Bankers Life & Cas. Co.*, 425 F.3d 689 (9th Cir. 2005).

7 3. On December 4, 2020, Plaintiff served upon Defendant, Albertsons, LLC, her
8 Complaint wherein Plaintiff alleges that she sustained injuries to her left tibia with fibula fracture,
9 injuries to her right frontal lobe and encephalomalacia, because of a slip and fall on Albertson's
10 premises.

11 4. On December 29, 2020, Plaintiff filed a Request for exemption from the Nevada
12 Clark County mandatory arbitration program alleging \$171,106.17 in past medical specials and
13 alleging serious and permanent injuries.

14 5. This Notice of Removal was filed timely as it was filed within thirty (30) days of
15 service of Plaintiff's Request for Exemption from Arbitration served upon Albertsons, LLC, on
16 December 29, 2020, which was the first motion, order or other paper from which it could first be
17 ascertained that this case is one which is or has become removable. *See* 28 U.S.C. 1446(b); *Harris*,
18 425 F.3d 689.

19 6. Pursuant to Fed. R. Civ. P. 6 (a), the last day of the thirty (30) day period set forth
20 under 28 U.S.C. 1446(b) is January 28, 2021. *See* 28 U.S.C. 1446(b), *Harris v. Bankers Life &*
21 *Cas. Co.*, 425 F.3d 689 (9th Cir. 2005).

22 7. This action concerns an allegation that the Defendant negligently caused, allowed
23 and failed to warn of a dangerous condition, causing injury to Plaintiff.
24
25
26
27
28

139 E. WARM SPRINGS RD.
LAS VEGAS, NEVADA 89119
T. 702.380.0007 | F. 702.380.2964

BRANDON | SMERBER
LAW FIRM

1 8. At the commencement of this action and at the time of the filing of this Notice of
2 Removal, Plaintiff, EILEEN ROTH was, and now is, a citizen of the State of California.

3 9. At the commencement of this action and at all times herein, Defendant,
4 ALBERTSONS, LLC, was, and now is, a limited liability company duly organized and existing
5 under the laws of the State of Delaware with its principal place of business in Boise, Idaho, and
6 therefore, is a citizen of the State of Delaware and Idaho.

7 10. A limited liability company is a citizen of every State of which its members are
8 citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

9 11. Defendant, Albertsons, LLC's sole managing member is Albertson's Companies,
10 Inc.

11 12. Albertson's Companies, Inc., is a corporation organized under the laws of the
12 State of Delaware with its principal place of business in Boise, Idaho. *See, Exhibit "1."*

13 13. Corporations are citizens of any State in which they are incorporated or have their
14 principal place of business. *Id.*; 28 U.S.C. § 1332(c)(1).

15 14. Thus, Albertson's Companies, Inc., is a citizen of the State of Delaware and
16 Idaho.

17 15. Therefore, for diversity purposes, Albertsons, LLC, is a citizen of the State of
18 Delaware and Idaho.

19 16. Documents showing that Albertson's Companies, Inc., was organized under the
20 laws of the State of Delaware with its principal place of business in Boise, Idaho are attached as
21 Exhibit "1."

22 17. DOES I through X and ROE CORPORATIONS I through X are named and sued
23 fictitiously and their citizenship is disregarded as a matter of law for purposes of removal on
24 grounds of diversity jurisdiction. 28 U.S.C. § 1441(a).

1 18. Plaintiff, EILEEN ROTH, alleges that she is and was at all relevant times
2 mentioned in her Complaint, a citizen of the State of California, residing in the County of Los
3 Angeles. Based upon Plaintiff's allegations, Defendant is informed and believes that Plaintiff,
4 EILEEN ROTH, is a citizen of the State of California, County of Los Angeles.

5
6 19. Because, at the time of commencement of this action, Defendant is a citizen of
7 Delaware and Idaho, and Plaintiff is a resident of the State of California, County of Los Angeles,
8 complete diversity of citizenship exists between Plaintiff and Defendant. *See* 28 U.S.C. § 1332.

9 20. Upon information and belief, Plaintiff, EILEEN ROTH's past medical specials
10 are in excess or equal to One Hundred Seventy-One Thousand One Hundred Six Dollars & 17/100
11 cents (\$171,106.17), with future medical specials and pain and suffering of an undetermined
12 amount. As a result, the amount in controversy exceeds Seventy-Five Thousand Dollars
13 (\$75,000.00).

14
15 21. The United States District Court for the District of Nevada has original
16 jurisdiction pursuant to 28 U.S.C. § 1332 in that the parties are citizens of different States and the
17 amount in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00)
18 exclusive of interests and costs.

19
20 22. Accordingly, Plaintiff's Complaint is removed pursuant to 28 U.S.C. 1441, which
21 provides that a defendant may remove a case over which the federal court has original jurisdiction.

22 23. A copy of all process and pleadings served upon the Defendant is attached hereto
23 as Exhibit "2."

24
25 WHEREFORE, Defendant, ALBERTSONS, LLC, a Delaware limited liability company

26 ///

27 ///

respectfully requests that this action proceed in this Court as an action properly removed to it.

DATED this 30th day of December, 2020.

BRANDON | SMERBER LAW FIRM

/s/ Lew Brandon, Jr., Esq.

LEW BRANDON, JR., ESQ.

Nevada Bar No. 5880

ANDREW GUZIK, ESQ.

Nevada Bar No. 12758

SARA PASQUALE, ESQ.

Nevada Bar No. 14412

139 East Warm Springs Road

Las Vegas, Nevada 89119

Attorneys for Defendant,

ALBERTSON'S, LLC

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on the 30th day of December, 2020, I served a true and correct copy of the foregoing **DEFENDANT ALBERTSONS, LLC'S NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 USC § 1441(a)** via the Court's electronic filing and service systems to all parties on the current service list, as follows:

BOYD B. MOSS III, ESQ.

Nevada Bar No. 8856

boyd@mossberglv.com

JOHN C. FUNK, ESQ.

Nevada Bar No. 9255

john@mossberglv.com

4101 Meadows Lane, Suite 110

Las Vegas, Nevada 89107

702-222-4555

Facsimile – 702-222-4556

Attorneys for Plaintiff,

EILEEN ROTH

/s/ Bonita Alexander

An Employee of BRANDON | SMERBER LAW FIRM